

Exemption No. 7847

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
RENTON, WASHINGTON 98055-4056**

In the matter of the petition of

Boeing Commercial Airplanes Group

for an exemption from § 21.191(f)
of Title 14, Code of Federal Regulations

Regulatory Docket No. FAA-2002-12873

GRANT OF EXEMPTION

By letter #6-1031-GQA-MRM02-325, dated July 12, 2002, Mr. Scott G. Peterson, Director-Quality, Boeing Commercial Airplanes Group, Regulatory Administration, P.O Box 3707, Seattle, Washington 98124-2207, petitioned for a one-time exemption from the Market Survey provisions of the Special Airworthiness Certificate, Experimental category, requirements of § 21.191(f) of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would allow for carriage of persons involved in airplane sales and marketing that is not allowed under current interpretations of the rule on one Boeing Model 737-990 airplane, serial number 30017, registration number N737X, tab number YD501.

The petitioner requests relief from the following regulations:

Section 21.191(f) states that an Experimental certificate is issued for use of aircraft for purposes of conducting market surveys, sales demonstrations, and customer crew training only as provided in § 21.195.

ANM-02-357-E

Related Sections of 14 CFR

Section 21.195(a) states that a manufacturer of aircraft manufactured within the United States may apply for an experimental certificate for an aircraft that is to be used for market surveys, sales demonstrations or customer crew training. Paragraphs (b) and (c) of this section are not relevant to this petition. Paragraph (d) of this section requires the applicant for an experimental certificate for these purposes to establish an inspection and maintenance program for the continued airworthiness of the aircraft and show that it has been flown for a specific number of hours.

Section 91.319(a)(1) states that no person may operate an aircraft that has an experimental certificate for other than the purpose for which the certificate was issued.

The petitioner supports its request with the following information:

“In accordance with 14CFR11.25, The Boeing Company hereby requests an exemption from 14 CFR 21.191(f) to allow it to carry persons involved in airplane sales and marketing not allowed under current interpretations of this rule. In particular, the exemption sought would authorize The Boeing Company to conduct up to six demonstration flights in the Washington, D.C., area for senior FAA officials, selected members of Congress and print and television media under the Market Survey provisions of the Special Airworthiness Certificate, Experimental category. This exemption is being sought specifically for airplane registration number N737X, serial number 30017, model number 737-990, tab number YD501.

“The proposed exemption would read:

“The Boeing Company is hereby granted an exemption from 14 CFR 21.191(f) to allow carriage of persons involved in sales and marketing of transport category airplanes on a Boeing Model 737-990, airplane serial number 30017, registration N737X [tab number YD501], while this airplane meets the operational and safety requirements of 14 CFR 91.

“Need and Rationale for Exemption

“These flights are currently scheduled for July 29 through August 1, 2002, and will be conducted on a Boeing Model 737-990, airplane, serial number 30017, registration N737X. All flights will be based from Washington National Airport. They will be conducted in order to demonstrate operational and safety enhancements that are being developed for incorporation into future Boeing products. Additionally, these flights will build awareness and interest in new airplane technology.” By letter dated July 22, 2002, Boeing stated that, “Although Boeing still intends to operate from [Washington National

Airport], it is hereby requested that Dulles International Airport be added to the exemption as an alternate base of operation.”

“In addition to the flightcrew and essential test personnel, up to 20 people will be carried on each demonstration flight. They will consist of a combination of senior FAA officials, selected members of Congress, news media personnel and their video camera crews, aviation print media reporters, vendor technical experts and Boeing public relations and marketing personnel. These demonstrations will provide an excellent opportunity to showcase American aerospace products to government officials and promote aviation’s newest technology. The airplane is currently certificated with a Special Airworthiness Certificate, Experimental category, for the purposes of Research and Development, to Show Compliance with Regulations, and Market Survey.

“We believe that 14 CFR 21.191(f) should be interpreted to allow a properly equipped 737 to carry anyone who may enhance our ability to sell airplanes. This would include the direct customers, their advisors and financial backers, the government regulators and administrators of the U.S. and customer nations, our vendors and risk sharing partners, members of the press and media, sales and marketing personnel and airplane support personnel.

“Public Safety and Public Interest

“We note that the current interpretation of 14 CFR 21.191(f) already includes direct customers with no requirement other than the airplane have either 50 flight hours if a new type design or 5 hours if a modified type design. In the interest of public safety, we believe it is prudent to add stipulations that the airplane to be used under this exemption:

“1. Be a transport category airplane, governed by adequate flight manual equivalent information, including a Minimum Equipment List (MEL).

“2. Be properly equipped with operational equipment in compliance with 14 CFR 91 (and ICAO requirements as appropriate), i.e., navigation, communication, etc.

“3. Be properly equipped with passenger safety equipment in compliance with 14 CFR 91 (and ICAO requirements as appropriate), i.e., oxygen, seats, passenger address, emergency egress provisions, etc.

“Additionally it should be noted that the recently certified elevator tab configurations and rudder system enhancements have been installed on this airplane.

“With these stipulations, we believe public safety is properly addressed and granting this exemption will be in the public interest by enabling us to be more competitive in the global marketplace.

“We request that the FAA consider not delaying action on this petition by publishing the exemption request for public comment. This request is for limited relief from the requirement and therefore would not create a public safety issue.”

The FAA has determined that good cause exists for waiving the requirement for Federal Register publication for the following reasons: (1) the grant is for a one time exemption for a requirement, and not a permanent relief from a requirement; (2) the exemption, if granted, would not set a precedent; and (3) such a delay in acting on this petition would be detrimental to Boeing Commercial Airplanes Group in that it would cause cancellation of the flight for which the exemption is sought.

The FAA's analysis/summary is as follows:

Part 21 of Title 14, Code of Federal Regulations (14 CFR) § 21.191(f) for market survey does not permit an experimental certificate, under which the Boeing Model 737 airplane is currently certificated, to be issued for the purpose of conducting a transportation flight for the news media and camera crew, vendors, and public relations personnel. Further, there does not appear to be any Experimental category that would accommodate this type of operation.

The airplane is certificated under a Special Airworthiness Certificate, Experimental category, for the purposes of R & D (research and development), Show Compliance to the Regulations, and Market Survey. One of the operating limitations issued for this airplane states, “No person may be carried in this aircraft during flight unless that person is required for the purpose of the flight.” News media personnel are not required for the purpose of the flight nor could they be carried under any of the purposes assigned to this airplane.

The FAA Type Certificate Number TC A16WE was issued on April 17, 2001, to the Boeing Company for the Boeing Model 737-900 series. Therefore, an airplane that conforms to the approved type design is eligible for a Standard Airworthiness Certificate. The proposed flight could be conducted in an airplane with a Standard Airworthiness Certificate.

The Boeing 737-990, serial number 30017, is not presently eligible for a Standard Airworthiness Certificate because it does not conform to the Type Certificate in the areas of added flight test instrumentation, flight test wiring, flight test support equipment, red label and restricted use parts (some hardware or software configuration modifications are

not approved), and interior differences. This airplane could be reconfigured to meet the Type Certificate and the issuance of a Standard Airworthiness Certificate by removing the above differences and refurbishing the airplane with all approved production parts per type design. At this time, the changes are not considered to be necessary or appropriate due to the flight test schedule time constraints, relatively minor differences, and the fact that the changes do not affect the major flight characteristics or operating systems of the airplane.

These flights are currently scheduled for July 29 through August 1, 2002. The petitioner requests waiver of the requirement for submittal of petition for exemption at least 120 days before the proposed effective date of the exemption as stated in § 11.63. It is furthermore requested that the publication and comment procedures of § 11.87 be waived, to expedite granting of the one time exemption.

Granting the petitioner's request would not adversely affect safety because: (1) this exemption is for [one time only], and (2) the airplane is in a configuration that is not significantly different from the production airplane. Boeing has operated and maintained the airplane per the established flight and maintenance manuals. The airplane proposed for these flights has accumulated 921 flight hours of the Boeing flight test program. The Boeing 737-990 airplane will be eventually delivered for revenue service with Alaska Airlines.

The FAA finds that granting this exemption is in the public interest because it will enable Boeing to compete more effectively with foreign competitors, increase foreign sales of Boeing airplanes and therefore create more airplane production jobs within the United States.

In consideration of the foregoing, I find that a grant of exemption is in the public interest, and will not significantly affect the level of safety provided by the regulations. Therefore, pursuant to the authority contained in 49 U.S.C. 40113 and 44701, delegated to me by the Administrator, Boeing Commercial Airplanes Group is granted a one time exemption from 14 CFR 21.191(f), on one Boeing Model 737-990 airplane, serial number 30017, registration number N737X, tab number YD501.

This exemption expires on August 3, 2002.

Issued in Renton, Washington, on July 26, 2002.

/s/

Vi L. Lipski
Manager, Transport Airplane Directorate
Aircraft Certification Service